

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON EMPLOYERS TRUST,

Plaintiff,

v.

CNA MANUFACTURING SYSTEMS, INC.,

Defendant.

C10-0464-JCC

ORDER

This matter comes before the Court upon Plaintiff's motion to amend the case schedule, or, in the alternative, to dismiss this matter without prejudice. (Dkt. No. 15). In addition to Plaintiff's motion, the Court has also considered Defendant's response (Dkt. No. 17), Plaintiff's reply (Dkt. No. 20), and the parties' various supporting exhibits and declarations. Having therefore reviewed the relevant record and having concluded that oral argument is unnecessary, the Court hereby GRANTS the motion for the reasons explained below. The Court therefore DISMISSES this matter without prejudice, without an award of costs or fees to either party, and with leave to re-file the complaint under a different cause number.

1 **I. BACKGROUND**

2 Plaintiff Washington Employers Trust commenced this case in March 2010. In the original
3 complaint, Plaintiff sought approximately fifteen-thousand dollars in damages and approximately two-
4 thousand dollars in attorney fees. (Complaint 2 (Dkt. No. 1)). Defendant CNA Manufacturing filed an
5 answer to the complaint approximately one year later, in March 2011. (Answer (Dkt. No. 13)).

6 The bench trial in this case was originally scheduled for September 26, 2011. (Conference
7 Minutes (Dkt. No. 8)). In June 2011, Plaintiff's counsel was preparing to file a motion for summary
8 judgment when he discovered errors in the calculation of damages claimed in the original complaint.
9 (Bohrer Decl. 3 (Dkt. No. 16)). Plaintiff represents that it will seek to amend the complaint in order to
10 claim more damages at some point in the future. (*Id.*).

11 Because the trial date is approaching, and because the parties need additional time to prepare
12 given the changes to the claimed damages, Plaintiff seeks the relief of this Court. Plaintiff asks the Court
13 to either continue the trial date and amend the case schedule, or to dismiss this matter without prejudice
14 and with leave to re-file. (Motion *passim* (Dkt. No. 15)).

15 Defendant opposes the motion to continue the trial date and continue the case schedule.
16 Defendant consents, however, to dismissal of this matter without prejudice. (Response *passim* (Dkt. No.
17 17)). Defendant's only request is that this Court impose five-hundred dollars in costs against Plaintiff for
18 the attorney fees and costs which Defendant has incurred in this matter.

19 **II. RELEVANT LAW**

20 Rule 41 of the Federal Rules of Civil Procedure authorizes this Court to dismiss a case upon the
21 plaintiff's request, provided that dismissal is "on terms that the Court considers proper." Fed. R. Civ. P.
22 41(a)(2). When considering whether to grant a plaintiff's motion to dismiss his or her case without
23 prejudice, this Court "must determine whether the defendant will suffer some plain legal prejudice as a
24 result of the dismissal." *Westlands Water District v. United States*, 100 F.3d 94, 96 (9th Cir. 1996).

1 **III. DISCUSSION**

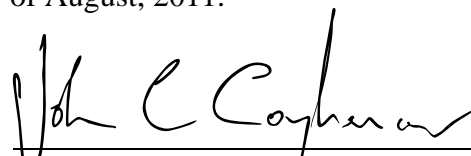
2 Because Defendant concedes that dismissal without prejudice is proper, it goes without saying
3 that Defendant shall suffer no legal prejudice if this matter is dismissed without prejudice. Dismissal is
4 therefore proper. *See Westlands Water District*, 100 F.3d at 96. The Court therefore grants Plaintiff's
5 motion to dismiss this matter without prejudice. Plaintiff shall have the right to re-file the complaint in
6 this matter at its convenience.

7 Defendant argues that this Court should impose five-hundred dollars in fees against Plaintiff for
8 the costs which Defendant has incurred in litigating this matter. The Court declines to do so.
9 Defendant's preparatory work shall serve it well during the litigation that commences once Plaintiff files
10 another complaint under a different cause number.

11 **IV. CONCLUSION**

12 For the aforementioned reasons, the Court hereby GRANTS Plaintiff's motion to dismiss
13 without prejudice. (Dkt. No. 15). The Court therefore DISMISSES this matter in its entirety. This matter
14 is dismissed without prejudice, without an award of costs or fees to either party, and with leave to re-file
15 the complaint under a different cause number.

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17 SO ORDERED this 16th day of August, 2011.

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20 JOHN C. COUGHENOUR
21 United States District Judge
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